# BOOK REVIEWS

*International Law, Chiefly as Interpreted and Applied by the United States.* By Charles Cheney Hyde. In Two Volumes. Boston, Little, Brown & Co., 1922. Vol. I, pp. lix, 832. Vol. II, pp. xxvii, 925.

This is undoubtedly the best general treatise on international law since the publication of Westlake's work in 1907. It adopts the general philosophical and legal point of view of Hall and Westlake, but is more strongly fortified by citation of documentary material, legislative, judicial, and diplomatic.

In a sense, the American lawyer seeking to determine the position of his own government on the principles and rules of international law is more fortunate than the lawyers of other countries. The facts that treaties are the supreme law of the land and that the law of nations is recognized by our Constitution as a part and source of municipal law, upon which the courts may draw in determining controversies, have served to give international law a legal importance in the United States which it does not possess in many other countries. Sir Henry Maine pays a high tribute to this view of the United States that international law is an integral part of the law of every nation, without legislative adoption or formal agreement. This undoubtedly accounts for some of the remarkable state papers which have issued from our Department of State, constituting universally acknowledged authorities on the principles of international law they expound. To the learning and labors of John Bassett Moore, the world owes its present access to this mass of documentary material, down to 1906. The American view of the place of international law and treaties in the legal system has also served to endow the decisions of our courts, notably of the Supreme Court, with an international importance often disproportionate to the case under consideration. It has encouraged American publicists to give a concrete, legal setting to their views not usually found in the writings of continental publicists of international law. Our frequent recourse to arbitration has helped to make the decisions of arbitration tribunals an important source of international law.

This vast fund of material constitutes the source of the volumes of Mr. Hyde. While much of it has heretofore been worked up in monographs on special subjects, Mr. Hyde has made the first attempt to synthesize the whole in a compact, systematic treatise. The topical arrangement does not vary greatly from the orthodox plan of presentation, but the critical legal analysis with which every subject is considered and the clear, concise, and literary form in which the author's thoughts are expressed make this one of the most notable contributions to international law published in the United States. It is written by a lawyer for lawyers, yet with the political scientist's appreciation of the underlying reasons for rules of public law.

Among the many important contributions of the work is the author's distinction between the legal position of the unarmed and the armed merchantman. While Germany was clearly wrong in denying that a merchantman had the privilege of arming—although the Department of State on January 18, 1916, pointed out that the original reason for arming had disappeared—nevertheless its inherent danger to a frail enemy warship like the submarine explains why, by arming, a merchantman must forfeit its ordinary immunity from attack at sight. This Mr. Hyde makes very clear. It deprives Mr. Root's submarine resolutions adopted at the recent "Disarmament Conference" of much of their force and practical efficacy in time of stress and justifies the French in qualifying the immunities of merchantmen therein mentioned to those that are unarmed. Goods and persons on

*armed* merchantmen in the World War subjected themselves to the dangers of their position and have no legal claim to indemnity.

Mr. Hyde lays due emphasis upon the practicability and soundness of the note of the Department of State of January 18, 1916, which seems to have been the high point of the American legal position. In March, 1916, by direction of the President, the Department issued a public statement on armed merchantmen which only added confusion to the subject and as a legal document seems inexcusable. It is subjected to earnest criticism by Mr. Hyde.

With respect to certain of the legal problems created by the war, Mr. Hyde's apparent toleration of violations of law that were perpetrated by British Orders in Council, a reminder of the Napoleonic Wars, would hardly seem to strengthen the fabric of international law or the possibility of reviving neutral rights at sea. Thus, the "measures of blockade" of neutral ports, the diversion of neutral ships to British ports, the abolition of conditional contraband, the expansion of the doctrine of continuous voyages and the contraband lists, the abolition of the distinction between civilian and belligerent members of the enemy population, the substitution of inference for evidence in prize courts and radical changes in the burden of proof, the rationing of neutral countries, the appropriation of private enemy property, are, if not approved, at least condoned or inadequately criticized. Mr Hyde's apparent willingness to abandon the age-long struggle for foodstuffs as goods conditionally contraband is discouraging. Salisbury's position in the Boer War was the correct one. Evidently Great Britain as a future neutral will have herself to restore the law. No mention at all appears to be made by Mr. Hyde of the British blacklist, by which the trade of the entire world, enemy, neutral and inter-neutral, was, in effect, subjected to British license. To this the United States submitted, although some of the British colonies did not. The effect of this precedent has not yet been calculated. Mr. Hyde intimates, however, that American acquiescence in the "measures of blockade" of neutral ports and the abandonment of "conditional contraband" practically involved a surrender of the Declaration of Paris that free ships make free goods and of the traditional American advocacy of the immunity from capture of private enemy property at sea. Only secondary damages for breach of legal duty can restore the legal position. The skill of British diplomacy in persuading neutrals that British violations of international law, so denominated by the Department of State, were justified as measures of retaliation against the ruthless enemy, whereas the latter's violations were direct attacks upon neutrals, secured concessions from neutrals the cost of which they have not yet reckoned, though they are likely to have a dominant effect upon maritime wars of the future. Reprisals are but rarely exact equivalents (II, 484). With respect to the treatment of enemy private property on land, Mr. Hyde merely recounts the provision of article 297 of the Treaty of Versailles and related treaties by which such sequestrated property was taken from its owners and applied to debts and reparations, though he admits (II, 241) that it "amounted to a practical confiscation of private property." The Russians, in their Genoa Memorandum of May 11, 1922, have not failed to rely upon it as a precedent. It is not easy to understand how the makers of the Treaty were tempted into the confiscation of private property, at the price of the insecurity of all future foreign investments and the inevitable effects of such a subversive doctrine upon the international relations of the future.

Mr. Hyde, in the course of his discussion, has made some valuable suggestions which deserve the attention of all lawyers dealing with the revision of the law of nations. For example, he believes that the old methods of visit and search at sea have become impractical, yet that compelling neutral vessels to enter port to be examined is probably an undue invasion of neutral privileges. He would, therefore, substitute (II, 628) requisite assurances from neutral importing and

exporting countries of the innocence of ships and cargoes, which, by convention, belligerent nations would accept. But would a country that refuses the word of a convoy as a guaranty of innocence be inclined to accept any more readily the word of the neutral executive authorities on shore? It must be remembered that some of the countries which aided in drafting the Declaration of London refused to ratify it. Why not go further and permit joint inspection and certification of manifests on shore?

Mr. Hyde would admit the reasonableness of war zones, provided they do not seriously impair the rights of neutrals. Thus, he would sanction those only in proximity to the national domain and for defensive purposes only. The latter test is likely to be elusive. On the bombardment of undefended coast towns (II, 408) no reference is made to the well-known contributions of the French Admiral Aube in the *Revue des Deux Mondes* for 1882 that "all that strikes at the source of (the enemy's) wealth, becomes not only legitimate but imposes itself as obligatory. It must therefore be expected to see the fleets, mistresses of the sea, turn their power of attack and destruction . . . . against all the cities of the coast, fortified or not, peaceful or warlike, to burn them, to ruin them, and at least ransom them without mercy." (p. 314.) The continuation of this discussion in the *Revue des Deux Mondes* and the *Nouvelle Revue,* mentioned by Mr. Moore in the *1901 Naval War College Situations with Solutions,* p. 33, is of some importance in the development of the subject.

With respect to citizenship, it is not believed that the Department of State has adopted Judge Hough's view [*United States, ex rel. Anderson v. Howe* (1916, S. D. N. Y.) 231 Fed. 546] but on the contrary, adopts Attorney-General Wickersham's view that the two years' absence of a naturalized citizen is a test for purposes of protection abroad, and does not apply to the citizen returning to take up his permanent residence in the United States. (See Mr. Flournoy's article, *supra* at p. 864.) The case of *Re Suarez* (1, 750) was appealed to the Court of Appeal. [1918] 1 Ch. 176. The cargo of the *Kim* (II, 621) was ultimately paid for.

Among the most notable contributions of Mr. Hyde's work is his discussion of neutrality and the distinction between those acts which a neutral State must prevent and those which it may permit on its soil. While apparently unfamiliar with the documents and pre-war diplomatic history recently uncovered by the researches of Pevet, Kautsky, Walschinger, Morel, and Fay, and therefore accepting in full the mythological propaganda theory of the origin of the war, he nevertheless points out that probably the only chance of limiting war to small areas or a restricted number of countries is to impose on neutral countries more rigorous duties of prevention. Thus, while approving the American position of shipping munitions of war to the Allies and permitting loans to be raised in our markets, he posits the proposal that wars may be shortened and starved out were it made a neutral duty to prevent belligerent aid of any kind from being furnished from neutral soil, even by private persons. Westlake had long pointed out that when the consent of the executive to foreign loans is required, as now under the Department of State's recent "suggestion" would seem to have become the American practice, a private loan is not distinguishable from a State loan. The proposal of the Covenant of the League of Nations therefore, to make neutrality obsolete by compelling all nations to join in a war upon any nation whom the powers that be may choose to denounce, is not calculated to diminish the area of conflict but rather to enlarge it.

The physical appearance of the books under review is worthy of their excellent content. They are a monument to the learning, mental power and industry of their author and are a credit to American scholarship.

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